234661

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

IN RE:	Docket No. 2011-317-W/S
Application of Kiawah Island Utility Company Incorporated for Approval of Rates and Charges	**MEMORANDUM IN SUPPORT OF DENIAL AND/OR DISMISSAL OF RATE APPLICATION**

The Kiawah Property Owners Group ("**KPOG**") submits this Memorandum in Support of the Denial and/or Dismissal of the Rate Application request filed by Kiawah Island Utility Company ("**KIU**") on August 4, 2011 (the "**Application**").

AUTHORITY TO DENY AND/OR DISMISS APPLICATION

Section 58-5-240 (C) of the South Carolina Code provides that an application for a rate increase must be processed by the South Carolina Public Service Commission (the "**Commission**") within six months from the date of filing. This provision does not require the Commission to approve or deny the rate application. This rate making authority gives the Commission the option to approve, deny in whole or part, or dismiss an application upon appropriate conditions. The South Carolina Supreme Court has held in Utilities Services of South Carolina, Inc. v. Office of Regulatory Staff, 392 S.C. 96, 708 S.E.2d 755 (2011) "that the Commission is the ultimate fact-finder. As such it may consider all evidence before it and does not serve as a "rubber stamp" for ORS recommendations."

KIU'S CONTINUED DISREGARD FOR THE PUBLIC SERVICE COMMISSION RULES

Throughout this proceeding, as well as previous proceedings, KIU has demonstrated a complete and total disregard for the Rules and Practices of the Commission.

Specifically, Rules 103-541 and 103-743 clearly state:

> "No utility shall execute or enter into any agreement or contract with any person, firm, partnership, or corporation or any agency of the Federal, State or local government which would impact, pertain to, or effect said utility's fitness, willingness, or ability to provide sewerage service, including but not limited to the collection or treatment of said wastewater, without first submitting said contract in form to the commission and the ORS and obtaining approval of the commission."

In a previous KIU rate case, the Commission's Order No. 97-4, Docket No. 1996-168-W/S, page 16, KIU was advised and admonished that failure to adhere to Rules 103-541 and 103-743 in the future may cause rejection of expenses associated with its leases if KIU fails to comply with the Commission's regulations and intercompany transfers are not submitted to and approved by the Commission. In that case, the Commission had discovered at least two leases that were not presented for review or approval prior to execution.

- The 1995 lease was for land adjacent to the Sora Rail Utility Property on which KIU constructed a holding pond for effluent from the waste water treatment plant.
- The 1996 lease was for the land on Governor's Drive for the construction of the Down Island Storage Tank and Pumping Station.

The following are other examples of KIU's failure to adhere to Commission Practices, Rules or Orders:

- Transmission and transfer lines, pumps and lift stations, fire hydrants and related items (See Commission Order No.92-1030 Docket No. 92-192-W/S)
- Collection of availability fees (now building incentive fees) without credit for rate making purposes (See Commission Order No. 97-4, Docket No. 1996-168-W/S)
- Failure to submit the 1994 and 1997 Utility Service Agreements to the Commission for approval
- Commission Order No. 97-4, Docket No. 1996-168-W/S, p10, states no time sheets will be required in future cases to show hours spent on utility business by upper management. However, it does state that time sheets are necessary for everyone else. What KIU provided in Exhibit "Audit #6" are not time sheets which demonstrate the date and duration of hours of the KRA employees allocated to working KIU or KIU related projects.
- Since KIU's financial maneuvering had become so involved and pervasive, the Commission ordered a management audit (see Commission Order No. 2000-0401, Docket No. 98-328-W/S.) That audit was never concluded due to KRA's refusal to agree to anything but the narrowest of scope of the audit.

Notwithstanding the Commission's warnings, in 2008, 2009, and 2010, KIU engaged in intercompany real estate transactions, transferring $5.1 million to its parent Kiawah Resort Associates ("**KRA**") without submission to or prior approval from the Commission. This was done in three separate transactions, all of which are outlined extensively in Hearing Exhibit 3, Stipulated Exhibits 11-19 which are part of the record in this proceeding. The most egregious part of these transactions is that the loan documents themselves recognize the spectre of regulatory approval and that they are subject to it. (Please see **Exhibit A** which is attached hereto and part of Hearing Exhibit 3, Stipulated Exhibits 11-19.)

In addition, KIU's own witness testified that KIU had considered and rejected the need for the Commission's approval prior to entering into any of these land purchases. Taking its chances based upon input from its counsel, KRA and KIU entered into complex loan transactions

for which the Commission was not even informally consulted. (See page 183, line 3 and pages 224 and 225 of the Hearing Transcript.)

Further, when questioned by Commissioner Fleming, Hannah Majewski, with the Office of Regulatory Staff ("ORS"), stated that these transactions should have been brought before the Commission. (See pages 459 and 460 of the Hearing Transcript). Obviously, neither KRA nor KIU contacted ORS regarding the need for submission, review and approval of these transactions prior to implementation/execution. Further, no adjustments were proposed by ORS for any of these transactions, including a derivative that resulted in a substantial new expense to KIU in the test year.

There is absolutely no public interest in transferring cash from KIU, encumbering the public utility assets, and providing for a future advance upwards of $15 million of loans, particularly without Commission oversight or approval. (Please see **Exhibit B** which is attached hereto and part of Hearing Exhibit 3, Stipulated Exhibits 11-19.) These transfers approximate the total annual revenue of KIU for the test year. These transfers could have defrayed almost all of the costs of a second water line to provide additional water supply, redundancy and capacity for future growth, all of which are clearly in the public interest. The $5.1 million extracted from KIU were, in effect, disguised dividend payments to the parent.

To effectuate the land purchases, it appears from the loan that KIU also has entered into some type of "credit facility" with RBC Bank without apprising the Commission. (Please see Hearing Exhibit 3, Stipulated Exhibits 14-16.) Even more troubling, however, is the fact that the loan documents reflect that there is a cross default provision which, apparently, would put KIU and its utility operations in jeopardy in the event there was a default on these loans by KRA or

another affiliate company, even if KIU were current on its debt payments. (Please see **Exhibit C** which is attached hereto and part of Hearing Exhibit 3, Stipulated Exhibits 11-19.) In essence, this means that the utility company, with its stable income flow, is at risk for the operations of KRA and its affiliates, which are, upon information and belief highly leveraged and much riskier businesses.

Most importantly, these loans mortgaged real property and pledged valuable utility assets solely to "pay" KRA for assets it technically already owned as the sole shareholder and 100% owner of stock of KIU (emphasis supplied). KIU presented no evidence of the fairness or arms length negotiations of these transactions. It would have been a very simple transaction to transfer the property for nominal consideration from KRA to KIU. The true motivation for the transfers is obvious.

In the Commission's Order No. 2002-285, Docket No. 2001-164-W/S, pages 12-13, the Commission stated "charges arising out of intercompany relationships between affiliated companies should be scrutinized with care, and if there is an absence of data and information from which the reasonableness and propriety of the services rendered and reasonable cost of rendering such services cannot be ascertained by the Commission, allowance is properly refused." In the case currently before the Commission, the absence of supported data is patently clear.

In short, what should have been a series of routine transactions, reflecting accounting entries between a parent and a subsidiary were utilized for purely private purposes, in no way advancing the public's interest and in clear violation of the Commission Rules. This is wrong

and should not be condoned by the Commission. KPOG respectfully requests the Commission hold KIU accountable and grant no portion of this rate increase.

THE PENDING SALE OF KIU MAKES THE APPLICATION PREMATURE

In this proceeding, there has been ample testimony that KIU's parent KRA intends to sell KIU. Specifically, there has been sworn testimony that KIU is in active negotiations with the Town of Kiawah Island (the "**Town**") and that the public is concerned about the effect of this rate application on those negotiations.

At the Public Hearing held on Kiawah Island, on October 20, 2011, a senior officer of KRA testified that the utility would be sold to either the Town or some other third party. Additionally, the testimony at the public hearing established that the Town has created a committee to study the purchase of the utility system and that it believes significant efficiencies will be achieved in the event KIU is acquired by the Town. Since the Town is a municipality, its purchase of KIU would moot the Application by removing it from the Commission's jurisdiction. See S.C. Code Ann. § 58-5-30.

Furthermore, the Town's intentions for acquiring KIU were most recently endorsed by the Town's voters having overwhelmingly (95%) expressed their support for the Town to acquire the utility system by way of referendum conducted on Tuesday, October 25, 2011.[1] Of the 408 votes cast (including a few absentee ballots), 387 were in favor and only 19 opposed the Town's moving forward to acquire KIU. Two ballots were invalid. The certification of the election is posted on the Town's website.

[1] To the extent that there is any evidentiary issue with respect to this fact, KPOG would request that the Commission take judicial notice of the election pursuant to South Carolina Rule of Evidence 201 by way of the posting of the results of the election on the Town's website at www.kiawahisland.org.

The establishment of a rate structure for a public utility is in the nature of a legislative act. Prentis v. Atlantic Coast Line Co., 211 US 210, 29 S. Ct. 67, 53 L. Ed. 150 (1908). The prospective nature of rate making requires the Commission to anticipate and adjust for future events in considering and deciding upon the Application. Rates established in this proceeding will almost certainly be subject to an entirely different ownership scenario, capital structure, and management.

Furthermore, in the event the utility is sold to a party other than the Town, the Commission will have to consider the terms and conditions of the proposed sale. See PSC Rule 103-704. This would necessitate an additional application, new docket and public hearing at which time the Commission would be required to determine the appropriateness not only of the acquiring entity, but also of the rates upon which the sale would be based, *i.e.*, do the rates reflect the true cost of the acquisition of the utility, fitness to operate the utility, etc.

In fact, in Docket No. 2009-48-S (Haig Point), KIU's expert witness John Guastella favored abeyance of a PSC decision on a rate application until question of ownership was settled. He stated at this point in time it would be preferable to defer a decision pending negotiation of the sale of the utility. Accordingly, KPOG respectfully submits that the facts in this case put it in a posture significantly different from that in Heater of Seabrook, Inc. v. Public Service Com'n of South Carolina, 332 S.C. 20, 26, 503 S.E.2d 739, 742 (1998), wherein the Commission denied a Motion to Dismiss a rate application pending a sale of the utility.

FURTHER CONSIDERATION WOULD PREJUDICE THE TOWN AND ITS RESIDENTS

Any rate increase granted to KIU at this time could result in an increased sales price, thereby negatively impacting the ability of the Town to utilize public financing or public funds to acquire KIU, as addressed supra. Any additional increase in the sale price would be borne by the KIU ratepayers.

KIU should not be able to enhance the value of the utility solely by virtue of their decision to file the Application for a rate increase. By delaying filing for this increase for ten years, the timing is highly suspect due to the potential sale of KIU. Additionally, rate increases have effectively already been granted to KIU in Commission Order No. 2002-285, Docket No. 2001-164-W/S. That Order provides for rate increases via a pass-through mechanism which covers the majority of KIU's increases in what it pays for water. Seven such increases have generated over $900,000 in additional revenues since the issuance of that Order.

The Home Rule Amendment to the State Constitution makes clear that municipalities have the authority to control actions that occur within their corporate boundaries. This principle has been well settled in numerous cases by the Supreme Court of South Carolina. See Berkeley Electric Cooperative, Inc. v. South Carolina Public Service Commission, 304 S.C. 15, 402 S.E.2d 674 (1991). The Town should negotiate with KIU under its present rate structure and not with an unnecessary, unwarranted rate filing.

THE APPLICATION HAS NO LOCAL PUBLIC SUPPORT

The affidavits provided to the Commission by KIU demonstrate that the affiants work for KRA, have a business relationship with KRA, or are not residents of the Town. In short, there has been virtually no local public support of the Application from KIU's ratepayers in the record

of these proceedings.[2] In fact, letters from over 100 KIU ratepayers requested the Commission carefully scrutinize the rate increase Application and grant only that portion of the increase the utility could justify. KPOG recognizes the decision rests with the Commission and trusts that the Commission will act in the interest of the public, not in the private interest of KIU and KRA.

DISMISSAL WOULD NOT PREJUDICE THE APPLICANT

A decision to dismiss the Application without prejudice would not harm KIU in any material way since it will be required to re-file its application providing specific information with respect to construction of a second water line. KIU unilaterally withdrew this portion of the application at the commencement of the hearing and will be re-filing it at a later date.

KIU has been preparing the Application for well over one year. Granting this request to deny or dismiss the Rate Application would not result in a substantial delay or prejudice nor would it render any information presented in the Application "stale" (assuming KIU is not sold to the Town).

CONCLUSION

It is clear that granting the requested rate increase or any portion thereof at this time would condone KIU's and KRA's failure to comply with the clear mandate of the Commission's Practices, Rules and Orders. It would provide a windfall to KRA and further drain KIU of cash borrowing capacity. This is clearly not envisioned by either the letter or spirit of the statutory framework for the Commission's duty to regulate rates and service of all public utilities. As the

[3] The only items submitted in support of the Application (other than the Application itself) are eleven affidavits presented to the Commission by KIU, most of whom upon information and belief are employed by or have business relationships with entities that are affiliated with the Utility Company. Kulick pre-filed direct testimony, p. 5, ll. 13-20

South Carolina Supreme Court stated in Utilities Services of South Carolina, Inc. v. Office of Regulatory Staff 392 S.C. 96 (2011) 708 S.E.2d 755 :

> "A fundamental question presented by both the Utility and ORS is this: can the PSC determine that a regulated utility has failed to meet its burden to prove expenditures when ORS has not challenged expenditures... the PSC may determine—independent of any party that– an expenditure is suspect and requires further scrutiny."

The unapproved financial transactions questioned in this case are extensive. The transactions involving transfer of funds are more than twice the total expenditures of the utility for the entire test year. It is clear that KIU is not concerned about the public interest; rather, it is clear that KIU is only concerned with how far they can push these types of transactions for their sole benefit without the Commission's approval.

Further, the stated intentions to sell the utility, either to the Town or a third party, would deem this application moot or result in a windfall to KRA. Accordingly, the Rate Application should be denied in full. A proposed Order to that effect is submitted with this Memorandum.

By:_____

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Dated: 1/18, 2012

EXHIBIT A

This Mortgage and the other Loan Documents, including the Obligations and the Credit Facility Loan Agreement, are incorporated into each other and they are each a part of the other.

The terms and conditions of one or more of the Loan Documents may include, among other things, provisions for the increase or decrease in the principal amount of the Obligations, adjustment of the interest rate or rates applicable to the Obligations, adjustments in payments relative to the Obligations and extension or renewal of the maturity date or dates of the Obligations. One or more of the Loan Documents may also contain provisions permitting other adjustments in the Obligations and the other Indebtedness and obligations secured hereby.

All of the Loan Documents will be applied and enforced in harmony with and in conjunction with each other to the end that Bank realizes fully upon its rights and remedies in each and the liens and security interests created by each; and, to the extent conflicts exist between this Mortgage and the other Loan Documents, including conflicts relative to the meanings/use of terms, they will be resolved in favor of achieving the full realization of Bank's rights and remedies and the liens and security interests as aforesaid.

Notwithstanding any provision herein to the contrary, Bank understands and acknowledges that Mortgagor operates in a regulated industry, and that the assignment of or grant of a security interest in certain property (the "Restricted Property") may be limited by applicable laws, rules, and regulations and the need for third party consents. Mortgagor makes no warranty or representation as to the assignability or transferability of any of such Restricted Property. "Restricted Property" shall not, however, be deemed to include any portion of the Collateral constituting real property, fixtures, tangible personal property, inventory accounts receivable, and Rents and Profits.

The recitals are part of this Mortgage. All exhibits and other attachments to this Mortgage are incorporated herein.

Mortgagor waives the benefit of all present and future homestead, appraisement, valuation, stay, extension, reinstatement and redemption laws, and all rights to require marshalling.

Mortgagor, to the extent permitted by law, waives any right to a trial by jury in any action arising from or related to this Mortgage.

This Mortgage will be governed by and construed in accordance with the laws of the State of South Carolina, excluding, however, the conflict of law and choice of law provisions thereof.

Except as otherwise provided in this Mortgage, the terms and conditions of this Mortgage may be changed only by an agreement in writing signed by Bank and Mortgagor.

Mortgagor does hereby irrevocably constitute and appoint Bank its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to do or cause to be done such acts as Bank, in its sole discretion, deems necessary and advisable to effect the terms and conditions of this Mortgage and the other Loan Documents and to otherwise realize Bank's rights, authority and powers hereunder and thereunder, and the benefits provided to Bank herein and therein. The foregoing appointment is and the same will be coupled with an interest in Bank's favor.

If two or more persons have joined as Mortgagor, each of the persons will be jointly and severally obligated to perform Mortgagor's obligations in this Mortgage.

Subject to the limitations on Mortgagor's right to assign set forth herein and any other limitations on assignment in any of the other Loan Documents, the covenants, terms and conditions contained in this Mortgage will bind, and the benefits and powers will inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto. At any time or times and without notice to Mortgagor or any other person, Bank may assign any or all of the Obligations or sell or transfer one or more participations in any of the Obligations, and in connection with any such assignments, sales or other transfers, may assign Bank's rights and benefits under this Mortgage and any of the Loan Documents in whole or in part; and, this Mortgage will apply to, be binding upon and inure to the benefit of each one of and all of Bank's participants, successors and assigns, including any agent that may administer or service any of the Obligations for any holder of any of the Loan Documents, or any assignees, transferees or participants.

All notices and other communications under this Mortgage will be deemed given when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses of the parties as set forth in this Mortgage. Mortgagor and Bank may, by written notice given hereunder, designate a different address where communications should be sent and Bank may direct, by notice to Mortgagor, for communications to be sent electronically or in some other non-tangible medium.

EXHIBIT B

covenants and agreements contained in the Obligations and those in all documents evidencing, securing or relating to the Obligations, by a conveyance of Mortgagor's interest in the lands and improvements and a grant of the security interests hereinafter described.

B. The maximum principal amount of the Obligations, including present and future advances and obligations, that may be secured by this Mortgage at any one time is an amount up to Fifteen Million and No/100 Dollars ($15,000,000.00). The current principal amount of the Obligations outstanding which are secured by this Mortgage as of the date hereof (including any amounts which have been advanced prior to the date hereof) is _____ Dollars ($_____).

C. The period within which any and all future advances and obligations may be incurred under the Obligations is set forth in the Obligations, but in no event shall such period exceed fifteen (15) years from the effective date of this Mortgage. No written instrument or notation shall be required to evidence or secure any future advances and obligations hereunder.

D. Subject to the terms of the Obligations, the maximum amount available under the Obligations may be borrowed and repaid or reduced by partial payment and from time to time reborrowed and repaid (i.e., decrease or increase from time to time), provided the unpaid balance of the principal outstanding under the Obligations shall never exceed the maximum principal amount, including present and future advances and obligations, stated above. Nothing contained herein shall obligate Bank to make any advances to or extend credit to or for the benefit of any person obligated on the Obligations, and any such advances and extensions shall be under the terms and conditions contained in the Obligations or otherwise in the discretion of Bank.

E. The Obligations, including those presently in existence and those which may in the future come into existence, shall be evidenced by one or more instruments (to include promissory notes), chattel paper, general intangibles (to include payment intangibles), accounts, letters of credit, supporting obligations (to include guarantees), commitment letters, loan agreements, credit agreements, agreements relating to derivatives transactions (e.g. interest rate swaps, caps, floors or collar transactions, or other similar transactions made pursuant to an International Swap Dealers Association, Inc. Master Agreement or similar agreement) and other evidences of an indebtedness or other obligation owing to Bank by the person identified on the **Information Schedule** under the heading "Obligations" as the obligor or other person obligated on the Obligations, such evidences of indebtedness or other obligation and all extensions, renewals, modifications, amendments, substitutions and replacements thereof and therefor to be in a written or tangible medium, an electronic medium or in some other medium which is retrievable in a perceivable form, the terms and conditions (including the maturity dates of the Obligations) of which are incorporated herein by reference, and which Obligations may contain provisions for the adjustment of the interest rate or rates, adjustments in payments, extension or renewal of the term or terms, among other things.

NOW, THEREFORE, in consideration of the premises and for the purpose of securing the Obligations and the other indebtedness and obligations as aforesaid, and in further consideration of the sum of Ten Dollars ($10) paid to Mortgagor by Bank, receipt of which is hereby acknowledged, Mortgagor has given, granted, bargained, sold, conveyed and mortgaged, and by these presents does give, grant, bargain, sell, convey and mortgage to Bank, its successors and assigns, upon the representations, warranties, covenants, terms and conditions set forth in this Mortgage, all of Mortgagor's right, title and interest in and to (1) the parcels of land described on **Exhibit A**, (2) the rights and benefits appurtenant to said parcels of land and (3) the buildings and other improvements (to include manufactured homes) now located thereon and thereunder and those which in the future may be or may come to be located thereon and thereunder (collectively, the "Property"), together with all equipment, fixtures, standing timber (to include timber to be cut, but this inclusion does not permit cutting of timber unless Bank agrees to such cutting in advance thereof), crops grown, growing and to be grown on the Property (to include crops that are produced on trees, vines and bushes, and aquatic goods) and other farm products (to include livestock – born and unborn, supplies and products of crops and livestock), oil, gas and other minerals and as-extracted collateral (but inclusion of as-extracted collateral does not permit extraction unless Bank agrees to such extraction in advance thereof) owned by Mortgagor and that in which the Mortgagor has any rights and interests, both now existing and located in, on, over and under the Property and that which may be hereafter acquired and located as aforesaid, whether used in connection with the ownership, possession, operation and maintenance of the Property, or otherwise (collectively,

EXHIBIT C

(d) Bank shall not exercise any remedy resulting from the actual demolition, injury, or waste to the Collateral as described in Section 14.1(3) of the Mortgage, if (i) such demolition, injury, or waste affects a non-material portion of the Property and (ii) has no material, adverse effect on the value of the Property or the prospect of payment and performance by Mortgagor of its obligations to Bank.

(e) Section 14.1(4)) is hereby amended by changing each reference therein to "ten (10) days" to "ten (10) business days."

(f) The Bank shall not exercise any remedy resulting from the occurrence of an Event of Default described in Section 14.1(5) of the Mortgage consisting solely of the filing of a petition of bankruptcy against the Mortgagor if such filing is dismissed within thirty (30) days after the filing thereof.

(g) The Bank shall not exercise any remedy resulting from the occurrence of an Event of Default described in Section 14.1(6) of the Mortgage unless the Bank shall have first given the Mortgagor written notice of default or the breach of the terms, conditions, or default under the separate assignment of leases giving rise to the Event of Default, and such default or breach shall have continued unremedied beyond any applicable cure and/or notice period set forth in the separate assignment of leases;

(h) The Bank shall not exercise any remedy resulting from the occurrence of an Event of Default described in Section 14.1(7) of the Mortgage, consisting solely of Mortgagor's default under the terms of any instrument or other agreement to which this Mortgage is subordinate or which is subordinate to this Mortgage, unless the default under the instrument or agreement giving rise to such Event of Default shall have continued unremedied thereafter beyond any cure and/or notice period set forth in such instruments or other agreements;

(i) The Bank shall not exercise any remedy resulting from the occurrence of an Event of Default described in Section 14.1(8) of the Mortgage, unless the Bank shall have first given the Mortgagor notice of the default under the commitment letter referred to therein giving rise to the Event of Default, and such default shall have continued unremedied thereafter for a period of thirty (30) days after written notice thereof is given by the Bank to the Mortgagor; provided, however, that if such breach or default does not arise from term, covenant, agreement, or condition for the payment of money and is susceptible of being cured by the Mortgagor, but not reasonably within thirty (30) days, no default shall be deemed to have occurred so long as the Mortgagor commences cure within such thirty (30) days and diligently pursues such cure to completion and such cure is completed within ninety (90) days;

(j) The Bank shall not exercise any remedy resulting from the occurrence of an Event of Default described in Section 14.1(9) of the Mortgage, unless the false statement, misrepresentation, or withholding was materially false and related to a material matter; and

(k) Section 14.1(10) of the Mortgage is deleted in its entirety, and the following Section 14.1(10) is substituted in its stead:

> "(10) default by Mortgagor, or any other person obligated on any of the Obligations, on any Indebtedness that is not included within the term "Obligations," and owing by Mortgagor or such other person to Bank, or if Mortgagor is an organization and not an individual, default by any subsidiary of Mortgagor under any indebtedness or other obligation now owing or hereafter arising and owing by any such subsidiary to Bank regardless of whether such subsidiary is or may in the future be obligated on any of the Obligations, and the continuation of such default unremedied beyond any applicable cure and/or notice period set forth in the documents, instruments, and agreements evidencing or governing such other Indebtedness;".

14. Section 14.2.2 is deleted and the following Section 14.2.2 is substituted in its stead:

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
Docket No. 2011-317-W/S

CERTIFICATE OF MAILING

We hereby certify that on this 18th day of January 2012, we served a copy of Intervenor Kiawah Property Owners Group, Inc., Memorandum in Support of Denial and/or Dismissal of the Rate Application upon:

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DATED at Charleston, South Carolina, this 18th day of January 2012.

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